

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

CASSANDRA MAXWELL

Plaintiff,

v.

FRANCISKA BECKER,

Defendant.

ORDER
12-CV-864S

1. This Court previously referred this matter to the Honorable Leslie G. Foschio, United States Magistrate Judge, for all pretrial matters pursuant to 28 U.S.C. § 636(b)(1)(A). (Docket No. 14.) Pursuant to this provision, a magistrate judge may, with certain exceptions, hear and determine any pretrial matter pending before the court. The magistrate judge's order on such a pretrial matter will be reconsidered by the district judge only when it has been established that it is clearly erroneous or contrary to law. See 28 U.S.C. § 636(b)(1)(A). Further, "with respect to non-dispositive discovery disputes, the magistrate judge is afforded broad discretion which a court should not overrule unless this discretion is clearly abused." Germann v. Consolidated Rail Corp., 153 F.R.D. 499, 500 (N.D.N.Y. 1994). This matter was also referred to Judge Foschio pursuant to 28 U.S.C. § 636(b)(1)(B) and (C) to prepare and file a report and recommendation containing findings of fact, conclusions of law and a recommended disposition on any dispositive motion.

2. On August 13, 2015, Judge Foschio issue a decision, order, and recommendation on Defendant's motion to preclude (Docket No. 36) and for summary judgment. (Docket No. 41.) Specifically, Judge Foschio denied Defendant's motion to preclude with the exception of limiting the expert witness testimony of Dr. Graham Huckell "to that which is based on his own observations and treatment of Plaintiff, excluding the

subject matter of the permanency of Plaintiff's injuries." (Docket No. 71 at 11.) Judge Foschio further recommended that this Court deny Defendant's motion for summary judgment in its entirety.

3. The Court has reviewed Plaintiff's objection to the limitation placed by Judge Foschio on Dr. Huckell's testimony and finds that the magistrate judge's decision on this non-dispositive discovery matter is neither clearly erroneous nor an abuse of discretion. Germann, 153 F.R.D. at 500. Further, no objections to Judge Foschio's recommended denial of Defendant's summary judgment motion were received from any party within fourteen (14) days from the date of its service, as required by 28 U.S.C. § 636(b)(1)(C) and Rule 72(b) of the Federal Rules of Civil Procedure and the Local Rules of Civil Procedure of this Court. That recommendation is therefore adopted.

IT HEREBY IS ORDERED, that Plaintiff's objection to Judge Foschio's non-dispositive discovery decision (Docket No. 72) is DENIED;

FURTHER, that the recommendation to deny Defendant's summary judgment motion (Docket No. 71) is ACCEPTED;

FURTHER, that Defendant's motion for summary judgment (Docket No. 41) is DENIED.

SO ORDERED.

Dated: September 30, 2015
Buffalo, New York

/s/William M. Skretny
WILLIAM M. SKRETNY
United States District Judge